APPENDIX A

Statutes Involved

The relevant provisions of the Internal Revenue Code of 1954 and the Regulations thereunder are as follows:

INTERNAL REVENUE CODE OF 1954.

SEC. 165. LOSSES.

[Sec. 165(a)]

"(a) GENERAL RULE.—There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise."

REGULATIONS UNDER THE INTERNAL REVENUE CODE OF 1954

Sec. 1.165-1(d)(2)(i):

"If a casualty or other event occurs which may result in a loss and, in the year of such casualty or event, there exists a claim for reimbursement with respect to which there is a reasonable prospect of recovery, no portion of the loss with respect to which reimbursement may be received is sustained, for purposes of section 165, until it can be ascertained with reasonable certainty whether or not such reimbursement will be received. Whether a reasonable prospect of recovery exists with respect to a claim for reimbursement of a loss is a question of fact to be determined upon an examination of all facts and circumstances. Whether or not such reimbursement will be received may be ascertained with reasonable certainty, for example, by a settlement of the claim, by an adjudication of the claim, or by an abandonment of the claim. When a taxpayer claims that the taxable year in which a loss is sustained is fixed by his abandonment of the claim for reimbursement, he must be able to produce objective evidence of his having abandoned the claim, such as the execution of a release."

Statutes Involved

Sec. 1.165-1(d)(4):

"The rules of this paragraph are applicable with respect to a casualty or other event which may result in a loss and which occurs after January 16, 1960. If the casualty or other event occurs on or before such date, a taxpayer may treat any loss resulting therefrom in accordance with the rules then applicable, or, if he so desires, in accordance with the provisions of this paragraph; but no provision of this paragraph shall be construed to permit a deduction of the same loss or any part thereof in more than one taxable year or to extend the period of limitations within which a claim for credit or refund may be filed under section 6511."

CHAPTER 645—PUBLIC LAW 285

An Act to amend the International Claims Settlement Act of 1949, as amended, and for other purposes. (Approved August 9, 1955.)

"SEC. 202. (a)

In accordance with article 25 of the treaty of peace with Bulgaria, article 29 of the treaty of peace with Hungary, and article 27 of the treaty of peace with Rumania, any property which was blocked in accordance with Executive Order 8389 of April 10, 1940, as amended, and remains blocked on the effective date of this title, and which, as of September 15, 1947, was owned directly or indirectly by Bulgaria, Hungary, and Rumania or by any national thereof as defined in such Executive order, shall vest in such officer or agency as the President may from time to time designate and shall vest when, as, and upon such terms as the President or his designee shall direct. Such property shall be sold or otherwise liquidated as expeditiously as possible after vesting under such rules

and regulations as the President or his designee may prescribe. The net proceeds remaining upon completion of the administration and liquidation thereof, including the adjudication of any suits or claims with respect thereto under sections 207 and 208, shall be covered into the Treasury. Notwithstanding the preceding provisions of this subsection, any such property determined by the President or his designee to be owned directly by a natural person shall not be vested under this subsection but shall remain blocked subject to release when, as, and upon such terms as the President or his designee may prescribe. If, at any time within one year from the date of the vesting of any property under this subsection, the President or his designee shall determine that it was directly owned at the date of vesting by a natural person, then the President or his designee shall divest such property and restore it to its blocked status prior to vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe, or if such property has been liquidated, shall divest the net proceeds thereof and carry them in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe."

"(b) The net proceeds of any property which was vested in the Alien Property Custodian or the Attorney General after December 17, 1941, pursuant to the Trading With the Enemy Act, as amended, and which at the date of vesting was owned directly or indirectly by Bulgaria, Hungary, or Rumania, or any national thereof, shall after completion of the administration, liquidation, and disposition of such property pursuant to such Act, including the adjudication of any suits or claims with respect thereto under such Act, be covered into the Treasury, except that the net proceeds of any such property which the

President or his designee shall determine was directly owned by a natural person at the date of vesting shall be divested by the President or such officer or agency as he may designate and carried in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe."

"(c) The determination under this section that any vested property was not directly owned by a natural person at the date of vesting shall be within the sole discretion of the President or his designee and shall not be subject to review by any court."

"(d) The President or his designee may require any person to furnish, in the form of reports or otherwise, complete information, including information with regard to past transactions, relative to any property blocked under Executive Order 8389 of April 10, 1940, as amended, or as may be otherwise necessary to enforce the provisions of this section; and the President or his designee may require of any person the production of any books of account, records, contracts, letters, memoranda, or other papers relative to such property or as may be otherwise necessary to enforce the provisions of this section."

"SEC. 302.

There are hereby created in the Treasury of the United States five funds to be known as the Bulgarian Claims Fund, the Hungarian Claims Fund, the Rumanian Claims Fund, the Italian Claims Fund, and the Soviet Claims Fund. The Secretary of the Treasury shall cover into each of the Hungarian, Rumanian, and Bulgarian Claims Funds, the funds attributable to the respective country or its nationals covered into the Treasury pursuant to subsections (a) and (b) of section 202 of this Act. The

Secretary of the Treasury shall cover into the Italian Claims Fund the sum of $5,000,000 paid to the United States by the Government of Italy pursuant to article II of the Memorandum of Understanding. The Secretary shall cover into the Treasury the funds collected by the United States pursuant to the Litvinov Assignment (including postal funds due prior to November 16, 1933, to the Union of Soviet Socialist Republics because of money orders certified to that country for payment) and shall cover into the Soviet Claims Fund the funds so covered into the Treasury. The Secretary shall deduct from each claims fund 5 per centum thereof as reimbursement to the Government of the United States for the expenses incurred by the Commission and by the Treasury Department in the administration of this title. Such deduction shall be made before any payment is made out of such fund under section 310. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts."

"SEC. 303.

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Governments of Bulgaria, Hungary, and Rumania, or any of them, arising out of the failure to—

'(1) restore or pay compensation for property of nationals of the United States as required by article 23 of the treaty of peace with Bulgaria, articles 26 and 27 of the treaty of peace with Hungary, and articles 24 and 25 of the treaty of peace with Rumania. Awards under this paragraph shall be in amounts not to exceed two-thirds of the loss or damage actually sustained;

'(2) pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title, of property of nationals of the United States in Bulgaria, Hungary, and Rumania; and

'(3) meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to April 24, 1941, in the case of Bulgaria, and prior to September 1, 1939, in the case of Hungary and Rumania, and which became payable prior to September 15, 1947.' ''

APPENDIX B

Opinion of the Court

(Filed April 14, 1967)

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 15937

PAUL H. SCHWEITZER AND FRIEDEL SCHWEITZER,
Petitioners,

VS.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON PETITION TO REVIEW THE DECISION OF THE TAX COURT OF THE UNITED STATES.

Argued February 9, 1967

Before BIGGS, HASTIE AND FORMAN, *Circuit Judges.*

PER CURIAM:

In 1959 Paul and Friedel Schweitzer claimed a deduction for a loss on their joint income tax return under Section 165(a) of the Internal Revenue Code of 1954. The Commissioner disallowed the deduction and asserted a deficiency and the Tax Court upheld his decision.

The loss claimed by the Schweitzers was due to losses sustained on property owned by Paul Schweitzer which was confiscated in 1949 and 1952 pursuant to decrees of the Praesidium of the Hungarian People's Republic.

Opinion of the Court

The question presented is whether the Schweitzers did not sustain their losses until 1959 when the deduction was claimed, although the properties were confiscated in 1949 and 1952. In 1955 the United States entered into an agreement for compensation of nationalized property with the Provisional Government of Hungary. Under this agreement, the International Claims Settlement Act of 1949 as amended, 22 U.S.C. Section 1621 *et seq.* (Supplement 1964), Paul Schweitzer filed a claim. The Foreign Claims Settlement Commission proposed a settlement of Schweitzer's claim which resulted in payments to him of $1,069.42 in 1959. The petitioners claim that not until this settlement by the Foreign Claims Settlement Commission did they have no reasonable prospect of recovery for the losses sustained on the confiscated property. The Tax Court, however, on sufficient evidence, found as fact that prior to 1959 the petitioners had no reasonable prospect of recovery for these losses at some future date. This finding makes Section 1.165-1(d) of the regulations under the Internal Revenue Code of 1954 inapplicable.

The decision of the Tax Court will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

Judgment

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 15,937

PAUL H. SCHWEITZER AND FRIEDEL SCHWEITZER,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

(T. C. Docket No. 4705-63)

ON PETITION TO REVIEW A DECISION OF THE TAX COURT OF THE UNITED STATES.

Present:

BIGGS, HASTIE and FORMAN, *Circuit Judges.*

This cause came on to be heard on the record from the Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decision of the said Tax Court in this cause be, and the same is hereby affirmed.

Attest:

THOMAS F. QUINN,
Clerk.

April 14, 1967.